

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

CAUSE NO. 05-10558  
AMOUNT \$ 256 - 2 checks  
SUMMONS ISSUED 12/17  
LOCAL RULE 4.1  
FEE PAID FORM  
NOT ISSUED  
CLERK  
DOCKET NO. 05-10558  
FILED 03/23/05

THOMAS V. MCCAFFERTY,  
as father and next of friend of  
BRYNN S. MCCAFFERTY, a minor,  
Plaintiff,

v.

LOWE'S COMPANIES, INC.,  
Defendant.

STATE OF MASS.

**05-10558-RWZ**

**NOTICE OF REMOVAL**

MAGISTRATE JUDGE Wesley

**TO THE JUDGES OF THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

Pursuant to 28 U.S.C. § 1446(a), the defendant, Lowe's Companies, Inc., hereby invokes this Court's jurisdiction under the provisions of 28 U.S.C. §§ 1332 and 1441(a) and states the following grounds for removal:

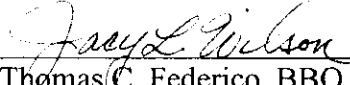
1. On February 10, 2005, the plaintiff filed a negligence action, styled and captioned as above and assigned Civil Action No. 05-0145, against the defendant in Bristol Superior Court.
2. The plaintiff served the Summons, Complaint, Civil Action Cover Sheet, and Tracking Order upon the defendant on or about February 28, 2005.
3. The Summons, Complaint, Civil Action Cover Sheet, and Tracking Order, constitute all process, pleadings, and orders served on the defendant to date in this action. Copies of each are attached as Exhibit A.
4. Having been filed within 30 days of service of the Summons and Complaint upon the defendant, this Notice of Removal to the United States District Court has been filed in a

timely manner pursuant to the provisions of 28 U.S.C. § 1446(b). See Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 347-48, 119 S. Ct. 1322, 1325 (1999).

5. The defendant has provided written notice, as required by 28 U.S.C. § 1446(d), to the adverse party and clerk of the state court in which this case was initially filed.
6. Jurisdiction exists over this removed action, pursuant to 28 U.S.C. § 1441, because this action could originally have been filed in this Court, pursuant to 28 U.S.C. § 1332(a)(1), on the basis that there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000:
  - a. The defendant, Lowe's Companies, Inc., is a North Carolina corporation with its principal place of business in Wilkesboro, North Carolina.
  - b. Based on the Complaint, the plaintiff is an individual residing in Mansfield, Massachusetts.
  - c. Based on the plaintiff's \$92,000 initial demand for settlement, the amount in controversy exceeds \$75,000. A copy of the demand letter is attached as Exhibit B.
7. Pursuant to 28 U.S.C. §§ 101 and 1441(a), the United States District Court for the District of Massachusetts is the proper forum for removal of the state court action which was commenced in Bristol Superior Court.

WHEREFORE, the defendant requests that the action pending in Bristol County be removed therefrom to this Court and proceed as an action properly so removed.

Respectfully submitted,  
The defendant,  
Lowe's Companies, Inc.,  
By its Attorneys

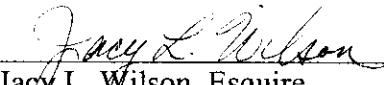
  
Thomas C. Federico, BBO #160830  
Jacy L. Wilson, BBO #658923  
Morrison Mahoney LLP  
250 Summer Street  
Boston, MA 02210  
Tel. (617) 439-7500

Dated: March 23, 2005

CERTIFICATE OF SERVICE

I, Jacy L. Wilson, hereby certify that a true and correct copy of the foregoing document was served by mail upon the following attorney of record on March 23, 2005:

Bradford N. Louison, Esquire  
Merrick, Louison & Costello, LLP  
67 Batterymarch Street  
Boston, MA 02110

  
Jacy L. Wilson, Esquire



## COMMONWEALTH OF MASSACHUSETTS

Form #42

BRISTOL, ss.

SUPERIOR COURT DEPT. OF THE TRIAL COURT

CIVIL ACTION

No. B05-0145

[SEAL]

Thomas V. McCafferty, As Father  
and Next Friend of Brynn McCafferty,  
A Minor, Plaintiff(s)

v.

Lowe's Companies, Inc. \_\_\_\_\_, Defendant(s)

(TO PLAINTIFF'S ATTORNEY :

PLEASE INDICATE TYPE OF ACTION INVOLVED :—  
TORT — MOTOR VEHICLE TORT — CONTRACT —  
EQUITABLE RELIEF — OTHER.)

## SUMMONS

TO THE ABOVE-NAMED DEFENDANT: Lowe's Companies, Inc.

You are hereby summoned and required to serve upon Bradford N. Louison  
of Merrick, Louison & Costello, LLP  
plaintiff's attorney, whose address is 67 Batterymarch St. Boston, MA 02110;

an answer to the complaint which is herewith served upon you, within (20) days after  
service of this summons upon you, exclusive of the day of service. If you fail to do so,  
judgment by default will be taken against you for the relief demanded in the complaint.  
You are also required to file your answer to the complaint in the office of the Clerk of this  
Court at Taunton either before service upon plaintiff's attorney or within a  
reasonable time thereafter.

Unless otherwise provided by Rule 13 (a), your answer must state as a counterclaim  
any claim which you may have against the plaintiff which arises out of the transaction or  
occurrence that is the subject matter of the plaintiff's claim or you will thereafter be  
barred from making such claim in any other action.

Witness, Hon. Barbara J. Rouse, Adm. Justice of the Superior Court Dept. of the Trial  
Court, at Taunton, the 16th day of February, in the year  
of our Lord two thousand and five

A TRUE ATTESTED COPY

Magistrate

NOTES:

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.
3. If the Commonwealth or an officer of agency thereof is a defendant, the time to be inserted is 60 days.

NOTICE TO DEFENDANT — You need not appear personally in Court to answer the  
complaint, but if you claim to have a defense, either you or your attorney must serve a  
copy of your written answer within 20 days as specified herein and also file the original  
in the Clerk's Office.

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT OF THE COMMONWEALTH  
SUPERIOR COURT DEPARTMENT

BRISTOL, SS

CA #: **B**05-0145

Thomas V. McCafferty,  
as father and next friend of  
Brynn S. McCafferty, a minor,  
Plaintiff

vs.

Lowe's Companies, Inc.,  
Defendant

COMPLAINT AND JURY CLAIM

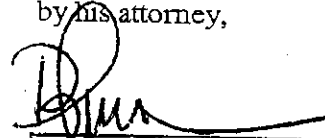
1. The plaintiff, Thomas V. McCafferty, as father and next friend of Brynn S. McCafferty, a minor, is a person with a residence at Mansfield, Bristol County, Massachusetts.
2. The Defendant is a corporation with a place of business at S. Washington St., North Attleboro, Bristol County, Massachusetts.
3. The Defendant is the owner and in control of a retail store located at the address above.
4. On June 24, 2003 while the minor plaintiff and her father were lawfully upon the premises of the defendant, the minor plaintiff and her father walked into an aisle where the defendant had negligently and carelessly permitted pallets to be lying on the floor, without any warning or guards, so that the premises were dangerous and unsafe for customers therein.
5. Said pallets were askew; some had bags of fertilizer on them, some had nothing on them.

6. The defendant, its agents, servants or employees negligently maintained the aisles of the store by reason of their leaving pallets laying across aisles where customers were obliged to walk.
7. As a result thereof, the minor plaintiff was caused to trip and fall, sustained serious injuries suffered great pain of body and mind, and her father was obliged to expend money for medical care and attendance.

WHEREFORE: The plaintiff demands judgement against the defendant for damages to compensate the minor plaintiff and him for their loss, interest and costs.

THE PLAINTIFF DEMANDS A JURY TRIAL

The plaintiff,  
by his attorney,



Bradford N. Louison (BBO # 305755)  
Merrick, Louison & Costello, LLP  
67 Batterymarch Street  
Boston, MA 02110  
(617) 439-0305

Feb. 8, 2003

<b>CIVIL ACTION COVER SHEET</b>	DOCKET NO.(S)	<b>Trial Court of Massachusetts Superior Court Department</b> County:
PLAINTIFF(S) Thomas V. McCafferty, as father and next friend of Brynn McCafferty		DEFENDANT(S) Lowes Companies, Inc.
ATTORNEY FIRM NAME, ADDRESS AND TELEPHONE Bradford N. Louison, BBO# 305755 Merrick, Louison & Costello, LLP 67 Batterymarch St., Boston, MA 02110 <small>Board of Bar Overseers number:</small>		ATTORNEY (if known)
(617) 439-0305 <b>Origin code and track designation</b>		
Place an x in one box only:		
<input checked="" type="checkbox"/> 1. F01 Original Complaint		<input type="checkbox"/> 4. F04 District Court Appeal c.231, s. 97 & 104 (After trial) (X)
<input type="checkbox"/> 2. F02 Removal to Sup.Ct. C.231,s.104 (Before trial) (F)		<input type="checkbox"/> 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X)
<input type="checkbox"/> 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)		<input type="checkbox"/> 6. E10 Summary Process Appeal (X)
<b>TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)</b>		
CODE NO.	TYPE OF ACTION (specify)	TRACK IS THIS A JURY CASE?
B04	Personal Injury (F)	(x) Yes ( ) No
The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.		
<b>TORT CLAIMS</b> (Attach additional sheets as necessary)		
A. Documented medical expenses to date:		
1. Total hospital expenses .. Sturdy Memorial Hospital .....		\$ 725.00
2. Total Doctor expenses .. Neponset Valley Orthopedics .....		\$ 455.00
3. Total chiropractic expenses .....		\$
4. Total physical therapy expenses Mansfield Physical Therapy .....		\$ 3,650.00
5. Total other expenses (describe) Southern N.E. Orthopedic Surgery .....		\$ 1,548.75
		Subtotal \$ 6,378.75
B. Documented lost wages and compensation to date .....		\$
C. Documented property damages to date .....		\$
D. Reasonably anticipated future medical and hospital expenses .....		\$ 5,000.00
E. Reasonably anticipated lost wages .....		\$
F. Other documented items of damages (describe) .....		\$
G. Brief description of plaintiff's injury, including nature and extent of injury (describe)		\$
Fractured distal humerus/elbow. Limited ROM with left arm seven months post accident		\$ 30,000.00
		<b>TOTAL \$ 41,378.75</b>
<b>CONTRACT CLAIMS</b> (Attach additional sheets as necessary)		
Provide a detailed description of claim(s):		
TOTAL \$ .....		
PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT		
"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."		
Signature of Attorney of Record <i>[Signature]</i>		DATE: 2/8/03

**Commonwealth of Massachusetts  
County of Bristol  
The Superior Court**

CIVIL DOCKET# BRCV2005-00145-B

RE: **McCafferty, as father and next friend of v Lowe's Companies, Inc.**

TO: Bradford N Louison, Esquire  
Merrick Louison & Costello  
67 Batterymarch Street  
3rd Floor  
Boston, MA 02110

**TRACKING ORDER - F TRACK**

You are hereby notified that this case is on the **fast (F) track** as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

**STAGES OF LITIGATION**

**DEADLINE**

Service of process made and return filed with the Court	05/11/2005
Response to the complaint filed (also see MRCP 12)	07/10/2005
All motions under MRCP 12, 19, and 20 filed	07/10/2005
All motions under MRCP 15 filed	07/10/2005
All discovery requests and depositions completed	12/07/2005
All motions under MRCP 56 served and heard	01/06/2006
Final pre-trial conference held and firm trial date set	02/05/2006
Case disposed	04/06/2006

The final pre-trial deadline is **not the scheduled date of the conference**. You will be notified of that date at a later time.

**Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.**

This case is assigned to session B sitting in CtRm 2 (Fall River) at Bristol Superior Court.

Dated: 02/10/2005

Marc J. Santos  
Clerk of the Courts

BY: Joseph T. Vincent / Peter R. Andrade  
Assistant Clerk

Location: CtRm 2 (Fall River)  
Telephone: (508) 672-4464

Disabled individuals who need handicap accommodations should contact the Administrative Office of the Superior Court at (617) 788-8130

Check website as to status of case: <http://ma-trialcourts.org/tcic>



JS 44 (Rev. 3/99)

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Thomas V. McCafferty, as father and next friend of Brynn S. McCafferty, a minor

(b) County of Residence of First Listed Plaintiff Bristol  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Bradford N. Louison  
Merrick, Louison & Costello, LLP  
67 Batterymarch Street, Boston, MA 02110

## DEFENDANTS

Lowe's Companies, Inc.

County of Residence of First Listed  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) **Thomas C. Federico**

**Jacy L. Wilson**

**Morrison Mahoney LLP**

**250 Summer Street, Boston, MA 02210-1181**

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- Citizen of This State ☒ 1 ☐ DEF 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐ DEF 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☒ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395m) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

## V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding  
☒ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

SIGNATURE OF ATTORNEY OF RECORD

DATE March 23, 2005

FOR OFFICE USE ONLY

JUDGE

MAG. JUDGE

RECEIPT #

AMOUNT

APPLYING IFP

05 - 10558

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Thomas v. McCafferty v. Lowe's Companies, Inc.

1. Title of case (name of first party on each side only) \_\_\_\_\_
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
 

<input type="checkbox"/>	I.	160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.	
<input type="checkbox"/>	II.	195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.	*Also complete AO 120 or AO 121 for patent, trademark or copyright cases
<input checked="" type="checkbox"/>	III.	110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.	
<input type="checkbox"/>	IV.	220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.	
<input type="checkbox"/>	V.	150, 152, 153.	
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.  
None
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?  
 YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)  
 YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?  
 YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).  
 YES ☐ NO ☒
  - A. If yes, in which division do all of the non-governmental parties reside?  
 Eastern Division ☐ Central Division ☐ Western Division ☐
  - B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?  
 Eastern Division ☒ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)  
 YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME THOMAS C. FEDERICO, JACY L. WILSON  
 ADDRESS MORRISON MAHONEY LLP, 250 SUMNER STREET, BOSTON, MA, 02210  
 TELEPHONE NO. (617) 439-7500

**MERRICK, LOUISON & COSTELLO, LLP**

ATTORNEYS AT LAW

67 BATTERYMARCH STREET  
BOSTON, MASSACHUSETTS 02110

TELEPHONE: (617) 439-0305  
FACSIMILE: (617) 439-0325  
www.merrickle.com

September 14, 2004

Elizabeth Cohar, Account Representative  
Speciality Risk Services  
P.O. Box 29618  
Charlotte, NC 28229

**Re: Account: Lowe's Store**  
**Claimant: McCafferty, Brynn**  
**Claim No: CFA 50100**  
**Date of Loss: 6/24/03**

Dear Ms. Cohar:

Please accept this letter as a demand for settlement on behalf of the minor Brynn McCafferty with regards to the injuries suffered at the Lowe's Store in Attleboro, Massachusetts.

**Demand**

The demand for settlement based on the liability (as discussed below) and the injuries and medical special damages is ninety two (\$92,000.00) thousand dollars

**Liability**

Brynn McCafferty, DOB: 3/22/97 was six years old on June 24, 2003, the date of accident when she and her father and sister went to the Lowe's Store, located at South Washington Street, North Attleboro, MA at approximately 12:30 p.m. (See attached photograph of Brynn with cast taken shortly after the accident.) The father, a police officer in the Town of North Attleboro was off duty and was shopping for fertilizer and other items. They walked into the store and went into the nursery section. As the three went down one aisle they turned right to come back up another aisle and as Mr. McCafferty stated to me, as soon as they came around the corner there were two or three empty pallets lying askew on the floor. Approximately six feet in front of those empty pallets were two pallets, in the middle of the aisle which were had fertilizer bags on them stacked chest high. As Mr. McCafferty walked around the corner, his daughter, Brynn, who was walking right behind him, tripped over the scattered empty pallets.

MERRICK, LOUISON & COSTELLO, LLP

Elizabeth Cohar, Account Representative  
September 14, 2004  
Page 2

Mr. McCafferty saw his daughter Brynn holding her left arm and she said to him, "Daddy I fell." At that point in time she was "whining" not crying, so Mr. McCafferty bought his fertilizer and paid for it with a credit card (enclosed please find the credit card slip for that purchase). Mr. McCafferty noticed that the skin on Brynn's arm looked flabby but went home in his car. Shortly thereafter he looked at his daughter's arm and it was extremely swollen. They then went to the ER at the Sturdy Memorial Hospital in Attleboro, MA. The arm was x-rayed and it was determined that it was broken in the left elbow. The doctor at that time said to wait for the swelling to go down. The next day, however, her left arm had swollen so they went back to the emergency room.

A further discussion on the injury and the medical care is described below.

Under the laws of the Commonwealth of Massachusetts, Lowe's is required to provide a safe environment for its shoppers. It is our position that leaving empty pallets lying scattered in an aisle right at the edge of the aisle is negligent in that it is reasonable to assume that a person who is walking around the corner of the aisle may be looking up at merchandise on the shelves and not see these pallets lying on the floor. There is no evidence that the McCafferty's were doing anything other than walking around the corner like any other shopper. Brynn McCafferty and her sister were not running or horsing around, they were simply walking behind their father. Such an accident could occur just as likely with an adult.

It is our position that the pallets left lying askew is a defect rendering Lowe's liable to the plaintiff for her injuries suffered as a result of falling over those pallets. A land owner owes a common duty of care to all lawful visitor and must maintain his property in a reasonably safe condition in view of the all the circumstances. Mounsey v. Ellard, 363 Mass. 693, 287 N.E. 2d 43 (1973). It is our position that this risk was not obvious since it would be difficult for a person who is walking around the aisle to notice these pallets because there was not enough time to see them as you approached them coming around the corner.

**Injury/Medical**

Brynn McCafferty treated at the Sturdy Memorial Hospital Emergency Room, Dr. Kenneth Guild, M.D., Southern New England Orthopedic Surgery and Sports Medicine, P.C., Dr. Philip Bentley and Mansfield Physical Therapy. Enclosed please find copies of all the medical bills and reports from those providers.

As you can see in Dr. Guild's notes of September 17, 2003, Brynn still lacked full flexion; still limited as of October 30, 2003 and still with problems as of December 17, 2003. As you will see in the attached medical reports it is unclear how or when that will improve and at this time we are considering it to be a permanent injury.

MERRICK, LOUISON & COSTELLO, LLP

Elizabeth Cohar, Account Representative  
September 14, 2004  
Page 3

You will see in the report of Dr. Bentley dated December 31, 2003, where he stated that at that time it was unclear to him whether or not this flexion problem will improve because at that time it had not. (Please see attached.)

In order to improve her arm use, Brynn McCafferty was referred to physical therapy and attended such therapy primarily at the Mansfield Physical Therapy in Mansfield, MA. (Neponset Valley Orthopedics is for Dr. Bentley).

I also have a copy of Brynn's X-ray if you would like to have that copied and review, please let me know.

I have attached herewith copies of all the medical bills which I have in my possession which by my calculation totals the following:

Sturdy Memorial Hospital	\$725.00
Neponset Valley Orthopedics	\$455.00
Mansfield Physical Therapy, Inc.	\$3,650.00
Southern New England Orthopedic Surgery and Sports Medicine, P.C.	\$1,548.75
Total:	\$6,378.75

If you would like to discuss the matter further, I look forward to hearing from you. It is our position that this condition may in fact be permanent although it is hoped that over time she will improve. We believe that the demand is fair under the circumstances particularly in the event that this condition becomes permanent. If the case went to trial with proof of a permanent injury a jury verdict would be considerably higher. Most if not all of the medical bills were paid by the family's Blue Cross Blue Shield Health Plan for which I have received a notice of lien a copy of which is enclosed herewith.

Very truly yours,



Bradford N. Louison

BNL/mob  
Enclosure  
P:\PERSONAL INJURY\McCafferty\Demand Letter.wpd